

HOUSE BILL REPORT

HB 1451

As Reported by House Committee On:
Finance

Title: An act relating to the taxation of temporary staffing services.

Brief Description: Modifying the taxation of temporary staffing services.

Sponsors: Representatives Ericks, Lovick, Walsh, Williams, Newhouse, Grant, Orcutt, Linville, Strow, Armstrong, Roach, Morris, Bailey, Warnick, Haler, O'Brien, Simpson, Santos, Eddy, McDonald and Kenney.

Brief History:

Committee Activity:

Finance: 1/31/07, 3/2/07 [DPS].

Brief Summary of Substitute Bill

- Reduces the business and occupation tax rate for temporary staffing service firms to 0.484 percent.

HOUSE COMMITTEE ON FINANCE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Hunter, Chair; Orcutt, Ranking Minority Member; Condotta, Assistant Ranking Minority Member; Ericks, Roach and Santos.

Minority Report: Do not pass. Signed by 3 members: Representatives Hasegawa, Vice Chair; Conway and McIntire.

Staff: Rick Peterson (786-7150).

Background:

A temporary staffing business recruits and provides temporary workers to other businesses and non-business customers, in situations such as employee absences, temporary skill shortages, and seasonal workload increases.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Temporary staffing businesses are subject to business and occupation (B&O) tax. The B&O tax is imposed on the gross receipts of business activities without any deduction for the costs of doing business. However, a business that acts as an agent for another business is not liable for B&O tax on amounts that merely "pass through" the agent as reimbursement for expenses incurred by the agent on behalf of the agent's client. For example, an attorney might pay court costs on behalf of a client. When the attorney is reimbursed for those costs by the client, the attorney is not liable for B&O tax on the reimbursements. The attorney is only liable for B&O tax on amounts charged as fees for the attorney's services.

Temporary staffing businesses charge their clients amounts which include both payments to the temporary workers and fees charged for the service of providing the employees. Until 2005, some temporary staffing businesses had been paying B&O tax on the amounts received as fees for the service of providing employees, but not on the amounts received for payment to the temporary workers as wages and benefits. Temporary staffing businesses took the position that they are merely acting as agents for the client businesses, and the wage and benefit amounts are not part of the taxable gross receipts of a temporary staffing business.

In December 2002, the Washington Supreme Court decided that temporary staffing businesses are not agents for B&O tax purposes. As a result of this decision, temporary staffing businesses are required to pay tax on all amounts received from their clients. The decision involved taxes imposed by the City of Tacoma, but the logic of the court's opinion applies equally to state B&O taxes. As a result, the Department of Revenue (DOR) began informing temporary staffing businesses that they must include wage and benefit payments in their taxable gross receipts. In January 2005, the DOR published the *Staffing Industry Tax Guide* to inform staffing firms of their tax reporting requirements.

Under the B&O tax, different tax rates apply to separate categories of business activity. Most businesses engaging in service activities, including most staffing services, are subject to B&O tax at the rate of 1.5 percent of gross receipts. However, businesses that provide construction, repair, and similar services to a consumer are subject to B&O tax at the retailing rate of 0.471 percent and must collect retail sales tax from the consumer. Businesses that provide construction, repair, and similar services as wholesalers or subcontractors pay B&O tax at the wholesaling rate of 0.484 percent. The DOR instructions require temporary staffing firms to report B&O tax under the proper classification and rate according to the activity they engaged in; for example, 1.5 percent for service activity, 0.471 percent for retail activity, and 0.484 percent for wholesale activity. They must also collect retail sales tax from their customers when performing services subject to the retail sales tax.

If a business that provides services taxable at the 1.5 percent rate has a place of business outside the state that contributes to the performance of services, the business must apportion to this state the portion of gross income derived from services rendered in this state. If it is not practical to use separate accounting methods to determine the amount of services rendered in this state, the taxpayer must apportion income to this state in proportion to the cost of doing business within this state relative to the total cost of doing business both within and outside the state.

Summary of Substitute Bill:

The B&O tax rate for staffing firms is equal to 0.484 percent. Staffing businesses that have a place of business outside the state that contributes to the performance of services must apportion income in the same manner as service businesses that are subject to the 1.5 percent B&O rate.

Substitute Bill Compared to Original Bill:

The substitute bill removes the provision that exempted staffing firms from collecting retail sales tax when they perform services subject to retail sales tax. The substitute bill delays the effective date from May 1, 2007, to October 1, 2007.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect on October 1, 2007.

Staff Summary of Public Testimony:

(In support) This legislation will establish a definition and single tax classification for the staffing industry. The livelihood of some staffing agencies is threatened by the current B&O tax rate. The appropriate solution is to calculate staffing industries' B&O taxes according to a classification that reflects the function of the industry, as is proposed in this bill. If the DOR continues a policy of multiple B&O tax rates for the staffing industry, it should be based on the predominant activity of the business client utilizing the temporary worker and not on the worker's individual assigned tasks.

(Opposed) We oppose only one provision of this bill but have concerns with the remainder of the bill. We oppose the bill's proposal to excuse temporary staffing companies from the obligation to collect retail sales tax on retail sales taxes from consumers of their taxable services. We also have concerns with the fairness of providing a single 0.484 percent rate for temporary staffing companies while competing businesses will pay rates that are higher or lower, depending upon the activity the business engages in.

Persons Testifying: (In support) Representative Ericks, prime sponsor; Brad Tower, Staffing Association of Washington; Sean Stewart; Carmen Hummel, Personnel Services; Julie Pratke, Humanity Staffing and Training; Mary Sauer, Northwest Staffing Resources; and David Gelson, Express Personnel.

(Opposed) Gil Brewer, Department of Revenue.

Persons Signed In To Testify But Not Testifying: None.